



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 6, 1998

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR98-1869

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117182.

The City of Fort Worth (the "city") received a request for information relating to personnel complaints, investigations and actions in which the requestor is a party. You assert that handwritten interview notes taken by Human Resources Department investigators while investigating two sexual harassment complaints as well as a memorandum summarizing the investigation of one of the complaints is excepted from public disclosure based on section 552.101 of the Government Code in conjunction with the constitutional right to privacy.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

You state that the requested information pertains to investigations of sexual harassment complaints. The doctrine of common-law privacy may protect from disclosure certain information concerning an investigation of a sexual harassment complaint. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In *Ellen*, the court determined that the statements and names of witnesses to victims of sexual harassment are

highly intimate and embarrassing. *See id.* Furthermore, the *Ellen* court held that, where information concerning a sexual harassment investigation had been released to the public in summary form, the public did not possess a legitimate interest in the names of witnesses or victims, their statements, or any other information that would tend to identify them. *See id.*

In this case, you state that the summary memorandum pertains to the first investigation. Thus, with the exception of information that identifies the victim, the city may not withhold the memorandum from disclosure as the public has a legitimate interest in this information. The city must withhold the interview notes that pertain to the first investigation in their entirety. *See id.* As the city has evidently prepared no summary of the second investigation, the city may not withhold the interview notes in their entirety, but only to the extent that they identify a witness or victim. *See id.*¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 117182

Enclosures: Submitted documents

cc: Mr. Gary G. Mevius
1836 Ranger Highway
Weatherford, Texas 76088
(w/o enclosures)

¹As the privacy interest of the victim rather than the requestor is implicated by the release of the requested information, section 552.023 of the Government Code is inapplicable. *See* Open Records Decision No. 556 (1990).